

09533906.021202

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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)
GEN-PROBE INCORPORATED,)
) NO.99cv2668 H (AJB)
Plaintiff,)
)
VS.)
)
VYSIS, INC.,)
)
Defendant.)
)
-----X

CONFIDENTIAL

Videotaped Deposition of
JONATHON MICHAEL LAWRIE, Ph.D.
Durham, North Carolina
Thursday, February 15, 2001

Reported by:
Sydney C. Silva, Registered Professional Reporter
File No:

COPY

EXH 14 PAGE 16

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|---|----------|---|----------------------------------|
| 1 meeting of Scientific Advisory Board in the fall of 2 1986? | 11:45:52 | 1 Q. Does that indicate to you that Exhibit 50 2 was prepared by you in the course of a Gene-Trak 3 Scientific Advisory Board meeting? | 11:48:01 11:48:04 11:48:08 |
| 3 A. I don't remember. | 11:45:57 | 4 A. During the meeting? | 11:48:09 |
| 4 (Deposition Exhibits Nos. 49 and 50 5 marked for identification.) | 11:46:16 | 5 Q. Yes. | 11:48:10 |
| 6 Q. I'm going to hand you two sets of notes. | 11:46:16 | 6 A. I don't know. | 11:48:11 |
| 7 The first set we'll mark as Exhibit 49 and the 8 second set we'll mark as Exhibit 50. And I would 9 like you to look at them, first so you can tell me 10 whether or not you recognize any of the handwriting 11 on these two exhibits. | 11:46:17 | 7 Q. Prepared in connection with the meeting? | 11:48:12 |
| 12 A. Yes, I do. | 11:46:22 | 8 A. Yes. | 11:48:13 |
| 13 Q. Do you recognize the handwriting on both? | 11:46:29 | 9 Q. Could have been prepared before or during 10 or after a meeting? | 11:48:14 11:48:17 |
| 14 A. Yes. | 11:46:33 | 11 A. Yes. | 11:48:18 |
| 15 Q. Exhibit 49 has got the larger, clearer 16 printing and a schematic on the first page. Do you 17 know whose handwriting that was? | 11:46:36 | 12 Q. Do you recall which one? | 11:48:19 |
| 18 A. Yes. | 11:46:39 | 13 A. Hum. I don't know. | 11:48:24 |
| 19 Q. Whose? | 11:46:40 | 14 Q. Do you have any idea when you prepared 15 Exhibit 49? | 11:48:29 11:48:33 |
| 20 A. That's mine. | 11:46:43 | 16 A. When? I don't know. | 11:48:42 |
| 21 Q. Exhibit 50, do you know whose handwriting 22 that is? | 11:46:45 | 17 Q. Can you recall an event that you prepared 18 Exhibit 49 in connection with? | 11:48:47 11:48:52 |
| 23 A. Yes. | 11:46:54 | 19 A. No. | 11:48:53 |
| 24 Q. Whose is that? | 11:46:55 | 20 Q. You can't do anything to place Exhibit 49 21 in context as you sit here today? | 11:48:59 11:49:03 |
| | 11:47:00 | 22 A. It's neat, so it was prepared before a 23 presentation; but I have no idea what presentation. 24 Q. Whatever presentation you made that | 11:49:08 |
| | 11:47:01 | | |
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| 1 A. It's mine. | 11:47:02 | 1 included Exhibit 49, you believe Exhibit 49 was 2 prepared ahead of time prior to the presentation? | 11:49:11 11:49:15 |
| 2 Q. Both of these are in your handwriting? | 11:47:03 | 3 A. Yes. | 11:49:18 |
| 3 A. Yes. | 11:47:08 | 4 Q. Can you recall getting the input of 5 anyone in connection with the preparation of 6 Exhibit 49? | 11:49:19 11:49:20 11:49:24 |
| 4 Q. And to the best of your recollection, 5 were these Exhibits 49 and 50 prepared in the 6 course of a Scientific Advisory Board meeting? | 11:47:09 | 7 A. No. | 11:49:26 |
| 7 A. My best of my recollection or looking at 8 the documents? | 11:47:12 | 8 Q. Exhibit 50, would you say that's less 9 neat than Exhibit 49? | 11:49:29 11:49:30 |
| 9 Q. The best of your recollection. | 11:47:19 | 10 A. Yes. | 11:49:31 |
| 10 A. I don't know what these were made for. | 11:47:25 | 11 Q. Would that indicate to you that it might 12 be -- let me start over. | 11:49:37 11:49:40 |
| 11 Q. Okay. Looking at Exhibit 50, do you 12 think that was prepared in the course of a 13 Scientific Advisory Board meeting? | 11:47:26 | 13 Would that indicate to you that it is 14 more likely notes taken contemporaneously during a 15 meeting at the same time the meeting was going on? | 11:49:45 11:49:52 |
| 14 A. Yes, it says "SAB." | 11:47:27 | 16 A. I don't know. | 11:49:53 |
| 15 Q. And do you -- the heading at the top of 16 Exhibit 50, "SAB" indicates it was prepared by you 17 as notes of a Scientific Advisory Board meeting at 18 Gene-Trak? | 11:47:29 | 17 Q. Do you have any independent recollection 18 of Exhibit 49; can you recall having seen it 19 before? | 11:50:00 11:50:05 |
| 19 MR. BANKS: Could you read that back, 20 please. | 11:47:31 | 21 Q. Do you recall any meeting of the 22 Scientific Advisory Board of Gene-Trak at which 23 there was a discussion of combining target capture 24 with target amplification? | 11:50:06 11:50:10 11:50:14 |
| 21 Q. I'll try it again, it'll be easier. | 11:47:34 | | |
| 22 Looking at Exhibit 50, it is headed at 23 the top of Page 1, "SAB." Do you see that? | 11:47:37 | | |
| 24 A. Yes is. | 11:48:01 | | |

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|----------|---|----------|---|----------|
| 1 | PCR method? | 12:13:08 | 1 diagramed out in Exhibit 49, any of those five | 12:16:20 |
| 2 | A. I don't know. I don't know. | 12:13:15 | 2 pages, to any of the amplification methods set | 12:16:24 |
| 3 | Q. You can't recall whether you were ever, | 12:13:16 | 3 forth on the third page of the Exhibit 48, which is | 12:16:29 |
| 4 | whether you were ever concerned about that? | 12:13:20 | 4 the Scientific Advisory Board packet from | 12:16:37 |
| 5 | A. Correct. | 12:13:22 | 5 November 4, 1986? | 12:16:40 |
| 6 | Q. Can you recall whether anyone else -- | 12:13:23 | 6 A. Orgel. I, I could speculate that the Q | 12:16:55 |
| 7 | that you understood that anyone else was concerned | 12:13:24 | 7 beta here is similar to what is set here. This | 12:17:01 |
| 8 | about whether the use of specific capture probes | 12:13:26 | 8 says "signal amplification" on top and "Q beta." | 12:17:05 |
| 9 | made any work that Gene-Trak was doing too close to | 12:13:31 | 9 This says Q beta replicase and signal | 12:17:10 |
| 10 | Cetus's PCR method? | 12:13:34 | 10 amplification. | 12:17:12 |
| 11 | MR. BANKS: Just caution you not to | 12:13:36 | 11 Q. So you think the Q beta signal | 12:17:12 |
| 12 | reveal any privileged information in answering | 12:13:38 | 12 amplification on Page 5 of the package of diagrams | 12:17:15 |
| 13 | that. | 12:13:42 | 13 is probably two Orgel? | 12:17:21 |
| 14 | A. Yeah. Capture probes are not the same as | 12:13:42 | 14 A. This? That I can't say. I don't -- I | 12:17:23 |
| 15 | Cetus; so I don't think, my definition of capture | 12:13:45 | 15 can't remember what Orgel is. | 12:17:24 |
| 16 | probes is not Cetus. Even today I would say it is | 12:13:48 | 16 Q. Can you relate any of the methods shown | 12:17:27 |
| 17 | different. | 12:13:54 | 17 on the Scientific Advisory Board packet to any of | 12:17:30 |
| 18 | Q. Can you ever recall discussions at | 12:13:58 | 18 the methods shown in Exhibit 49, the package of | 12:17:33 |
| 19 | Gene-Trak about trying to achieve target | 12:14:01 | 19 diagrams? | 12:17:40 |
| 20 | amplification that was equivalent to PCR by | 12:14:05 | 20 A. There's lots of good stuff here. I'd | 12:17:52 |
| 21 | combining a specific capture within a nonspecific | 12:14:09 | 21 have to speculate. Beyond Orgel, which I assume is | 12:18:03 |
| 22 | amplification step? | 12:14:14 | 22 the same as Kramer, I would be speculating to say | 12:18:07 |
| 23 | A. Equivalent to Cetus? No. | 12:14:20 | 23 that this is part of that. | 12:18:10 |
| 24 | Q. Better than Cetus? | 12:14:22 | 24 MR. BOWEN: We could go another five | 12:18:21 |

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| 1 | A. Better? Yeah, it's difficult. | 12:14:29 | 1 minutes or break for lunch, what's your | 12:18:23 |
| 2 | Q. While you were at Gene-Trak, did | 12:14:36 | 2 preference? | 12:18:26 |
| 3 | Gene-Trak do work that combined specific target | 12:14:38 | 3 MR. BANKS: I'm ready to break whenever | 12:18:28 |
| 4 | capture with amplification methods that would be | 12:14:41 | 4 you want to, but it's your call. | 12:18:29 |
| 5 | nonspecific in and of themselves? | 12:14:45 | 5 MR. BOWEN: Are you ready? | 12:18:34 |
| 6 | A. So you, by "develop," you mean? | 12:14:51 | 6 THE WITNESS: Doesn't matter to me. | 12:18:35 |
| 7 | Q. Was there work going on -- | 12:14:55 | 7 MR. BANKS: Do you want to break for | 12:18:35 |
| 8 | A. I don't know. | 12:14:57 | 8 lunch? | 12:18:36 |
| 9 | Q. -- in the laboratory? | 12:14:57 | 9 THE WITNESS: We can go another five | 12:18:37 |
| 10 | Looking at Page 5 of Exhibit 49, which | 12:15:04 | 10 minutes, if you want to complete your chain of | 12:18:39 |
| 11 | you will probably be happy to know is the last page | 12:15:11 | 11 thought. | 12:18:43 |
| 12 | of Exhibit 49, Page 5 lays out apparently to me | 12:15:14 | 12 BY MR. BOWEN: | 12:18:43 |
| 13 | three alternative methods of signal amplification. | 12:15:22 | 13 Q. Then I would like for you to pick up the | 12:18:44 |
| 14 | Is that a fair statement? | 12:15:24 | 14 patent that we marked at the start as Exhibit 37. | 12:18:46 |
| 15 | A. Three? Three bullet points, yes. | 12:15:27 | 15 A. Okay. | 12:18:49 |
| 16 | Q. These are three method of signal | 12:15:31 | 16 Q. We previously looked at I think Example 6 | 12:18:50 |
| 17 | amplification? | 12:15:34 | 17 of the patent, which is in Column 31, starts in | 12:18:53 |
| 18 | A. Let me look. Yes. | 12:15:35 | 18 Column 31. I would like to turn back to earlier in | 12:18:56 |
| 19 | Q. We looked, I think, at five pages in | 12:16:05 | 19 the patent, Column 24, the prior page of the | 12:19:01 |
| 20 | Exhibit 49. The fifth page has got three methods | 12:16:09 | 20 patent, and start with Example 1. | 12:19:06 |
| 21 | of amplification; the others generally I think | 12:16:13 | 21 A. All right. | 12:19:19 |
| 22 | describe one. Is that fair? | 12:16:15 | 22 Q. You know, that's going to take too much | 12:19:25 |
| 23 | A. Yes. | 12:16:17 | 23 time. | 12:19:29 |
| 24 | Q. Can you relate any of those five methods | 12:16:17 | 24 Can you turn to Example 7, which is in | 12:19:39 |

1 A. Yes, in the first sentence. 16:19:36
2 Q. And the amplification method described in 16:19:45
3 Example 4 is in vitro amplification of captured DNA 16:19:51
4 using an RNA polymerase, is that right? 16:19:56
5 A. Yes. 16:20:07
6 Q. And is it your understanding that the use 16:20:10
7 of the RNA polymerase would result in nonspecific 16:20:14
8 transcription of the target DNA? 16:20:23
9 A. Yes. 16:20:25
10 Q. So Example 4 describes a nonspecific 16:20:25
11 method of amplification? 16:20:29
12 A. Yes. 16:20:33
13 Q. And the method of amplification described 16:20:34
14 in Example 4 is a method of linear amplification, 16:20:37
15 is that correct? 16:20:43
16 A. Yes. 16:20:47
17 Q. Looking at Example 5, Example 5 also 16:20:56
18 refers to nonspecific amplification, is that 16:21:10
19 correct? 16:21:13
20 A. The first sentence says, "Nonspecific 16:21:13
21 replication of target DNA and transcription of that 16:21:17
22 DNA are used to amplify captured target DNA." So 16:21:23
23 it does address amplification. 16:21:36
24 Q. And the amplification method disclosed in 16:21:38

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1 Example 5 is a linear method? 16:21:41
2 A. Let's see. 16:21:44
3 Yes, it is linear. 16:22:29
4 Q. So Example 5 discloses a linear 16:22:31
5 nonspecific method of amplification? 16:22:34
6 A. Yes. 16:22:37
7 Q. So recapping the examples, Examples 1 16:22:38
8 through 3 disclose capture methods without 16:22:43
9 amplification? 16:22:46
10 A. Yes. 16:22:48
11 Q. And Example 4 discloses linear 16:22:49
12 nonspecific amplification? 16:22:53
13 A. Yes. 16:22:54
14 Q. Example 5 discloses linear nonspecific 16:22:55
15 amplification? 16:22:59
16 A. Yes. 16:23:00
17 Q. Example 6 seeks to describe nonspecific 16:23:02
18 exponential amplification? 16:23:10
19 A. Let's see. Yes. 16:23:13
20 Q. And Example 7 describes -- seeks to 16:23:18
21 describe nonspecific exponential amplification? 16:23:22
22 A. Yes. 16:23:28
23 Q. Looking back at Column 30, specifically 16:23:44
24 at Lines 30 through 40, which I think is two 16:23:48

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